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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by Human Rights Watch, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[28 December 1994]

The human rights situation in the Republic of Bosnia and Herzegovina

Statement of the problem

1. Civilians are the targets of the war in Bosnia and Herzegovina. Each party has perpetrated abuses against minorities in areas under their control, but the overwhelming majority continue to be perpetrated by Bosnian Serb forces. Most of these abuses are associated with "ethnic cleansing", whose main objective is the removal of an ethnic group from a given area through murder, population exchanges, forced displacement and terrorization.

2. Non-Serbs in northern Bosnia continue to be "cleansed" from their homes by Bosnian Serb authorities. More than 10,000 non-Serbs - primarily Muslims - were expelled from Serb-held areas of northern Bosnia in less than three months this summer and more are still fleeing or are being deported to Croatia and areas controlled by the Government. Those who remain are forced to labour in work gangs for Bosnian Serb officials, often along front lines. Others are terrorized, raped and beaten with impunity; still others are arrested arbitrarily and interned.

3. In the past year, Bosnian Serb forces have shelled the United Nations-declared safe areas of Tuzla, Sarajevo, Bihac and Gorazde and prevented aid convoys from reaching these areas and the two remaining safe areas, Zepa and Srebrenica. Bosnian Serb officials have effectively held United Nations soldiers hostage, have attacked NATO planes and have obstructed the humanitarian work of the United Nations Protection Force (UNPROFOR).

4. In 1993, Bosnian Croat and the mostly Muslim forces of the Government of Bosnia and Herzegovina fought and perpetrated abuses against one another. The abuses perpetrated by Bosnian Croat officials in the Mostar and Capljina areas were systematic and severe during this time. Government forces and Muslim paramilitary groups also committed abuses during this time against both Croats and Serbs, including the summary execution of civilians and disarmed combatants and mistreatment in detention.

5. In February 1994, Bosnian Croats and the mostly Muslim Bosnian Government reconciled their differences and agreed to form a federation, whose governing structures incorporate mechanisms designed to monitor and protect human rights, including a human rights court and an ombudsman. However, the federation's Government - and its human rights mechanisms - have not begun functioning due to continuing mistrust between Muslims and Croats in some areas, particularly around Mostar. Those displaced during the Muslim-Croat conflict have not been repatriated and human rights abuses continue in some areas, primarily in the Croat-held section of Mostar.

International humanitarian law

6. An elaborate legal regime governs the use of force affecting non-combatants and protects such persons from human rights abuses in times of war. International humanitarian law (the laws of war) - the Geneva Conventions of 1949 and the Protocols Additional to the Geneva Conventions - prohibit attacks against civilians and regulate the treatment of "protected persons" (i.e. civilians and prisoners of war) in territory controlled by a party to a conflict. The 1907 Hague Convention (IV) respecting the laws and customs of war on land and the Regulations annexed thereto regulates the conduct of hostilities and have passed into customary international law. Crimes against humanity were defined by the International Criminal Tribunal and Nürnberg and forbidden thereafter. The Convention on the Prevention and Punishment of the Crime of Genocide forbids the commission, attempt, incitement to and complicity in genocide.

Human Rights Watch/Helsinki's experience and findings

7. Human Rights Watch/Helsinki has been monitoring violations of international law by all parties to the conflict since the beginning of the war in Bosnia and Herzegovina in April 1992. We have had a constant presence in the field and have collected hundreds of testimonies from victims of, and witnesses to, human rights abuses. We have published two books containing our findings and issued shorter reports and letters reporting abuses by Government and Bosnian Serb and Bosnian Croat authorities.

8. Despite the vast body of international law forbidding such acts, war crimes and crimes against humanity have been committed on a massive scale in

Bosnia and Herzegovina. Moreover, the systematic and prolonged manner in which the policy of "ethnic cleansing" has been conducted in Bosnian Serb-held territory would qualify it as genocide, in that Bosnian Serb authorities "committed with intent to destroy, in whole or in part" non-Serbian ethnic groups by "killing members of the group, ... causing serious bodily or mental harm to members of the group ... [and] deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part". Despite international condemnation, Bosnian Serb forces have not ceased or made an effort to curb abuses against non-Serbs living in territory under their control. Murders, rapes, mistreatment in detention, forced labour along front lines, arbitrary arrest, deportations and institutionalized discrimination against non-Serbs remaining in Bosnian Serb-controlled areas continue without respite.

9. Government and Bosnian Croat forces also are guilty of serious abuses, but their crimes do not appear to reach the level of genocide in Bosnia and Herzegovina. Despite recent improvements in human rights practices by Bosnian Croat and Government troops, both are guilty of serious abuses of human rights and humanitarian law, most of which took place in 1992 and 1993. Both Government and Bosnian Croat forces are guilty of summary executions and mistreatment in detention. The Bosnian Croat authorities and their militia perpetrated systematic abuses, primarily against Muslims in the Mostar and Capljina areas in 1993. Abuses by the Bosnian Croats against Serbs also took place, primarily in 1992. Those responsible for many abuses have generally not been held accountable for their crimes. Abuses continue in Bosnian Croat-held territory, albeit on a much smaller scale than in 1993. Most of the abuses perpetrated by Government forces have been committed by individuals and do not appear to be part of a premeditated plan of the Government. The Government has taken modest steps to enforce discipline among its troops but many have not been held accountable for their abuses. Abuses against Serbian prisoners in Government military prisons and disarmed combatants are sometimes still reported.

Recommendations

10. Human Rights Watch calls on the United Nations Commission on Human Rights to:

(a) **Press international negotiators to ensure that human rights concerns are addressed during peace negotiations with all parties to the conflict in Bosnia and Herzegovina, particularly with the Bosnian Serb authorities, who must cease and prevent further "ethnic cleansing" in territory under their control;**

(b) **Urge Member States to support the work of the United Nations Protection Force (UNPROFOR) in the Muslim-Croat federation and of the European Union in Mostar. Also, Member States should encourage the Governments of Bosnia and Herzegovina and Croatia and the Bosnian Croat authorities to respect human rights in areas under their control, to hold accountable those members of their respective forces responsible for war crimes and other human rights abuses and ensure the full implementation of the federation's human rights mechanisms;**

(c) Press Member States to support politically and financially the work of the International Tribunal established by the United Nations to adjudicate war crimes and crimes against humanity in the former Yugoslavia;

(d) Press Member Sates to help fund the field operations of Tadeusz Mazowiecki, the United Nations Special Rapporteur on the former Yugoslavia of the United Nations Commission on Human Rights. The work of the International Tribunal established to adjudicate war crimes and crimes against humanity in the former Yugoslavia is limited to war-related abuses; only the Special Rapporteur has the mandate to report human rights violations not related to the conflict not only in Croatia and Bosnia and Herzegovina, but also in the former Yugoslav Republic of Macedonia and the Federal Republic of Yugoslavia (Serbia and Montenegro).

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